

REMARKS/ARGUMENTS

The Status of the Claims.

Claims 1-71 are currently pending with entry of this amendment. Claims 1 to 58 are currently under consideration, and claims 59 to 71 have been withdrawn from consideration due to a restriction requirement. Claims 1 and 24 are currently amended. Claims 72-112 are cancelled.

These amendments introduce no new matter and support for the amendments is replete throughout the specification and claims as originally filed. These amendments are made without prejudice and are not to be construed as abandonment of the previously claimed subject matter, or agreement with any objection or rejection of record.

The Election/Restriction Requirement.

Non-elected claims 59-84 have been previously withdrawn without traverse. Examiner has rightly suggested that a complete response to a final rejection of arguments after traverse of a restriction requirement, under MPEP § 821.01, must include cancellation of the non-elected claims. However, in the present case, the claims were withdrawn from consideration, without traverse, and thus subject to the requirements of MPEP § 821.02. Because group I was elected without traverse, Applicant is not subject to the cancellation requirement of MPEP § 821.01. Applicant requests that the asserted requirement for claim cancellation be withdrawn.

35 U.S.C. §102.

Claims 1-20, 24-44, 48, 56 and 58 were rejected under 35 U.S.C. §102 as allegedly anticipated by either Quinlan (U.S. 5,769,775) or Pang (U.S. 6,060,022). Applicant traverses.

In order for a reference to anticipate an invention, the reference must teach each and every element of the claimed invention. In order for a reference to anticipate an invention, anticipation requires that “all limitations of the claim are found in the reference, or ‘fully met’ by it.” Kalman v. Kimberly-Clark Corp., 218 USPQ 781, 789 (Fed. Cir. 1983). With respect to all the claims rejected for alleged anticipation, this requirement is not met.

Claim 1 is directed to an automated centrifuge that comprises, in addition to a rotor, either or both of the following elements: 1) at least one transport mechanism configured to move one or more sample processing components proximal to or within the plurality of sample receiving regions, wherein the sample processing components are configured to be inserted into sample vessels when the sample vessels are present in the rotor, and 2) at least one robot capable of inserting at least two sample vessels into the sample receiving regions at substantially the same time, wherein the sample receiving regions comprise one or more non-vertical clusters. Claim 1 is amended herein to more clearly state that the automated centrifuge can have "either or both of a transport mechanism and a robot." This particular amendment is presented solely for clarification and does not alter the scope of the claim.

The racks of Pang and Quinlan can not be considered sample processing components.

The present rejection is based on the allegation that sample processing components of the invention are robotically manipulated racks of tubes found in Quinlan and Pang. In the Interview of March 14, 2005, the Examiner stated the basis for rejection of claim 1 centers on an isolated sentence in the description in paragraph 18, at page 6, line 7, which states: "For example, in one embodiment, a plurality of the sample processing components in the group together comprise a plurality of sonication rods configured to be inserted into the sample receiving regions and/or a plurality of tubes configured to transport at least one fluid to or away from the sample receiving regions." The Examiner construes the term "a plurality of tubes" to imply that the sample processing components can be a rack of tubes. However, the sentence, read in the context of the whole specification, or the context of the paragraph of issue, makes it clear that the described sample processing component tubes do not include racks of test tubes. Applicants have amended claim 1 to reflect this fact. As amended, claim 1 recites that "the sample processing components are configured to be inserted into sample vessels when the sample vessels are present in the rotor" (emphasis added). A rack of tubes cannot be inserted into sample vessels and therefore cannot be considered "sample processing components" under the claim language as amended.

Quinlan and Pang do not anticipate the claims. Neither Quinlan nor Pang (nor any cited art) describe a robot capable of inserting at least two sample vessels into the sample receiving regions at substantially the same time, as described in clause (b)(2) of claim 1, and the Office Action does not assert that these references do describe this component of (b)(2). Therefore, the rejection is based on an allegation that test tube racks of the cited art are considered sample processing components of as specified in clause (b)(1) of claim 1.

Claims 1, 4-20, 24-40, 48, 56 and 58 are rejected as allegedly anticipated by Quinlan. However, this rejection should be withdrawn because Quinlan fails to describe either clause (b)(1) or clause (b)(1) of independent base claim 1. The Examiner asserts, at page 3 of the Office Action, that the Quinlan system teaches "sample processing components (e.g., rack 90) proximal to or within the plurality of sample receiving regions". However, clause (b)(1), as amended herein, requires the system to include at "least one transport mechanism configured to move one or more sample processing components proximal to or within the plurality of sample receiving regions, wherein the sample processing components are configured to be inserted into sample vessels when the sample vessels are present in the rotor" (emphasis added). Such sample processing components are not described in Quinlan, as the racks described in Quinlan cannot be inserted into sample vessels.

Because Quinlan does not describe all limitations of either claim 1 clauses (b)(1) or (b)(2), it can not anticipate the claim. In addition, because dependent claims 4-20, 24-40, 48, 56 and 58, have at least all the limitations of independent claim 1, they too can not be anticipated by Quinlan. Applicant requests withdrawal of section 102 rejections of claims based on Quinlan.

Claims 1-20, 22-44, and 48 are rejected as allegedly anticipated by Pang. Again, this rejection should be withdrawn because Pang fails to describe either clause (b)(1) or (b)(2) of claim 1. The Examiner asserts, at page 5 of the Office Action, that the Pang system is "configured with one or more sample processing components (e.g., each rack 600 comprises a holder 14 for containers 12 or 120)". However, the cited rack 600 (see Figure 9)

of Pang can hold sample vessels, but can not be inserted into the sample vessels. Therefore, Pang does not describe a system having the component specified in clause (b)(1) of claim 1, as amended herein.

Because Pang does not describe all limitations of claim 1, it can not anticipate the claim. In addition, because dependent claims 2-20, 22-44, and 48, have at least all the limitations of independent claim 1, they too can not be anticipated by Pang. Applicant requests withdrawal of section 102 rejections of claims based on Pang.

35 U.S.C. §103(a).

Claims 85-113 were rejected under 35 U.S.C. §103(a) as allegedly obvious in light of Quinlan or Pang in light of Lewis (U.S. 5,024,646). These rejections are now moot, as Applicants have canceled these claims. The cancellation of these claims is made without prejudice to their later renewal in a divisional, continuation, or other application, and is not an admission that these claims are not directed to patentable subject matter.

Allowable Subject Matter.

Applicants appreciate that claims 21-23, 45-47, 49-55 and 57 are considered allowable if they rewritten in independent form, including the limitations of the base claim. However, as noted above, the relevant base claim is properly allowable, and so to should the objected claims be without modification.

CONCLUSION

In view of the foregoing, Applicants believes all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the claims are deemed not to be in condition for allowance after consideration of this Response, a telephone interview with the Examiner is hereby requested. Please telephone the undersigned at (510) 769-3510 to schedule an interview.

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Attachments:

- 1) A transmittal sheet;
- 2) A Notice of Appeal;
- 3) A fee transmittal sheet;
- 4) A petition to extend the period of response for **3** months; and,
- 5) A receipt indication postcard.

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